

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

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This issue contains:
U.S. Customs Service
T.D. 98-79
General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 4

(T.D. 98-79)

REMOVAL OF BRAZIL FROM THE LIST OF NATIONS ENTITLED TO RECIPROCAL EXEMPTION FROM THE PAYMENT OF SPECIAL TONNAGE TAXES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing Brazil from the list of nations whose vessels are entitled to reciprocal exemption from the payment of special tonnage taxes and light money. The Department of State has informed Customs that Brazil has implemented a law that discriminates against U.S. vessels in its preferential tax treatment of cargoes carried on certain specially-registered Brazilian vessels; thus, Brazil no longer qualifies for the exemption. Accordingly, Customs is withdrawing the exemption privileges formerly granted Brazil.

EFFECTIVE DATE: This amendment is effective, and the reciprocal privileges extended to all Brazilian-registered vessels are withdrawn, as of October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Entry Procedures and Carrier Rulings Branch, (202-927-2320).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton denominated "light money", on all foreign vessels which enter U.S. ports (46 U.S.C. App. 121 and 128).

Vessels of a foreign nation, however, may be exempted from the payment of such special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost

are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 141).

The list of nations whose vessels have been found to be reciprocally exempt from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money is found at § 4.22, Customs Regulations (19 CFR 4.22). Nations granted these commercial privileges that subsequently impose discriminatory duties are subject to retaliatory suspension of the exemption from payment of special tonnage tax and light money (46 U.S.C. App. 141).

Brazil is currently listed among the nations exempt from the payment of such special tonnage taxes and light money.

The Department of State, however, has informed Customs that Brazil implemented a new tax law, effective as of July 30, 1998, that discriminates against U.S. vessels and the vessels of other countries in its preferential tax treatment of cargoes carried by certain specially-registered Brazilian vessels. Specifically, the law establishes a second commercial shipping register whereby the dutiable value of imported merchandise carried by Brazilian vessels so registered does not include freight charges. However, identical imports carried by U.S. vessels or the vessels of other countries are subject to duty on the freight charges as well as the value of the merchandise. Because this circumstance violates the reciprocal nature of the exemption privilege granted, Brazil no longer qualifies for the exemption.

As a result, the Department of State, in accordance with 46 U.S.C. App. 141 and Executive Order 10289 of September 17, 1951 (16 FR 9499, 3 CFR 1949-1953 Comp. p. 787, as amended, see 3 U.S.C.A. 301 note), has recommended to the Secretary of the Treasury, through Customs, that Brazil be removed from the list of nations found at § 4.22.

FINDING

The Customs Service has determined that the vessels of Brazil are no longer exempt from the payment of special tonnage taxes and light money, effective as of October 2, 1998, and that § 4.22 of the Customs Regulations should be amended accordingly. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT AND DELAYED EFFECTIVE DATE REQUIREMENTS, THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because this amendment concerns a foreign affairs function of the United States, merely implements a statutory mandate, and involves a matter in which the general public has no significant interest, pursuant to 5 U.S.C. 553, notice and public procedure thereon are considered unnecessary; further, for the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibil-

ity Act (5 U.S.C. 601 *et seq.*). Nor does the amendment meet the criteria for a "significant regulatory action" under E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 4

Cargo vessels, Customs duties and inspection, Entry, Maritime carriers, Vessels.

AMENDMENT TO THE REGULATIONS

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for § 4.22 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

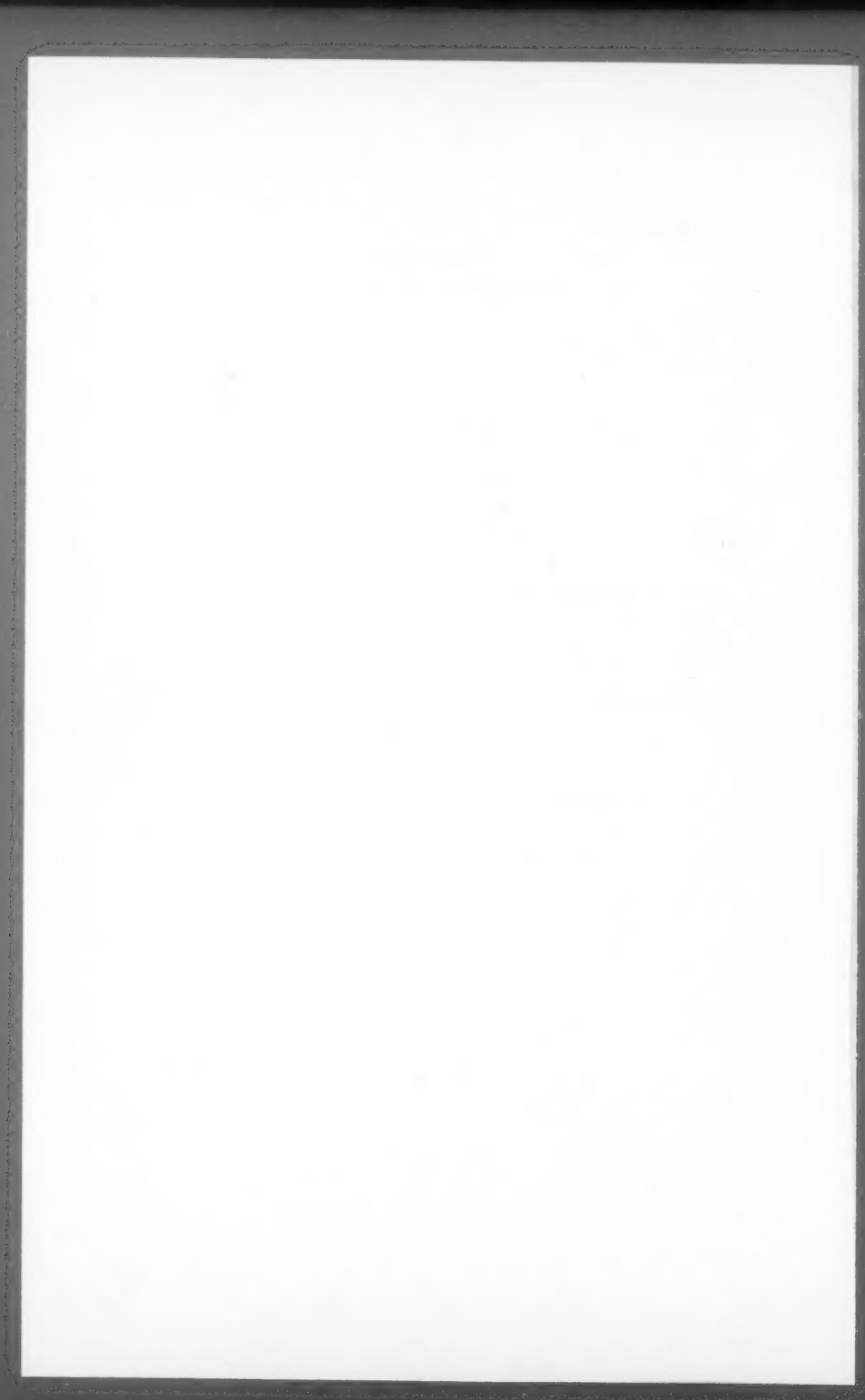
* * * * *

2. Section 4.22 is amended by removing "Brazil" from the list of nations entitled to exemption from special tonnage taxes and light money.

Dated: September 29, 1998.

HAROLD M. SINGER,
Chief,
Regulations Branch.

[Published in the Federal Register, October 2, 1998 (63 FR 52967)]



U.S. Customs Service

General Notices

INTERNATIONAL TRADE DATA SYSTEM

AGENCY: Department of the Treasury, International Trade Data System Project Office.

ACTION: General notice.

SUMMARY: This document announces the availability of a draft report recommending the design and implementation of the interagency International Trade Data System (ITDS), solicits public comments on that draft, and announces a public briefing on the ITDS recommendations.

DATES: The public briefing will take place on Thursday, November 5, 1998, beginning at 9:00 a.m. Requests to appear to present views at the briefing must be received on or before October 21, 1998. Requests to attend the briefing must be received on or before November 2, 1998. Written comments must be received on or before November 12, 1998.

ADDRESSES: The public briefing will take place in the Department of Commerce Auditorium located at 14th Street and Constitution Avenue, NW, Washington, DC. Requests to appear at or attend the briefing must be submitted to the ITDS Project Office by telephone at (202) 216-2760, or by e-mail at the ITDS Web Site (www.itds.treas.gov). Comments may be submitted in writing to the Department of the Treasury, International Trade Data System Project Office, 1300 Pennsylvania Avenue, NW, Suite 4000, Washington, D.C. 20229, or by e-mail at ITDS@usa.net.

FOR FURTHER INFORMATION CONTACT: Richard A. Kuzmack, Deputy Director, ITDS Project Office (202-216-2760).

SUPPLEMENTARY INFORMATION:

The International Trade Data System ("ITDS") is a Federal Government information technology initiative of the National Performance Review. The ITDS will provide the public with a single window through which to submit data and make payments required by all Federal Government agencies that regulate international trade transactions. It will also provide the public with a single, convenient point for accessing

data on international trade. The ITDS will contribute to the creation of a *government that works better and costs less* by: (1) reducing the cost and burden of processing international trade transactions for both the private trade community and the government; (2) improving the enforcement of and compliance with government trade regulations (such as those addressing public health and safety, animal and plant health, consumer protection, etc.); and (3) providing access to international trade data and information that are more accurate, complete, and timely.

The ITDS initiative is led by a Board of Directors chaired by the Department of the Treasury and composed of representatives from government agencies that are major participants in government international trade data processes. Agencies represented on the ITDS Board of Directors include the Treasury Department, Agriculture Department, Customs Service, Food and Drug Administration, Immigration and Naturalization Service, Transportation Department, Commerce Department, International Trade Commission, and the Office of the U.S. Trade Representative. The initiative is also supported by a project office hosted by the Department of the Treasury. The ITDS Board of Directors has reviewed and approved for public comment a draft project plan for implementing the ITDS system. Although agency reviews and other work continue on the draft, the ITDS Board has determined that it is appropriate at this point to seek public comment as part of the review process. Toward this end, the Board is posting major portions of the ITDS Draft Design Report on the Internet for public review and comment. The report can be accessed from the link on the ITDS Web Site at <http://www.itds.treas.gov>. The report consists of a series of sections each serving a specific purpose with the objective of satisfying government guidelines and requirements for the design, development, and administration of the scope of the ITDS.

The various sections of the ITDS Design Report are as follows:

Concept of Operations—The Concept of Operations is central to the Draft Design Report. It provides an overview of ITDS and forms the basis for the contents of the other sections. The conceptual basis for the Design Report was derived from the IT-06 Task Force Report dated May 1995. The key components outlined in the IT-06 Report that form the foundation of ITDS are: *Border Operations*, including commercial cargo and conveyance processing; *License and Permitting*, including the accounting for goods processed against specific licenses or permits; *Statistics, Analysis, and Policy Development*; and *Trade Promotion*. Another important factor regarding the functional content of the Concept of Operations is the design principles adopted by the ITDS Board of Directors.

Information technology Architecture Guidelines—The guidance contained in OMB Memorandum (M-97-16), Information Technology Architectures, and the recommended Department of the Treasury Information Technology Architecture (ITA), were used in the

development of the ITA Guidelines for the proposed system. The technical section of the ITA identifies the various rules, government directives, and standards to which agency systems must adhere in developing information systems. Collectively, the sections contained within the Design Report are intended to fulfill the guidelines outlined in M-97-16 in addition to satisfying the requirements of the Clinger-Cohen Act, OMB Circular A-130, and OMB Policy on Funding Information Systems Investments.

Hardware and Software Alternatives—The Hardware and Software alternatives section describes the alternative approaches (centralized, distributed, or a completely outsourced system). This section of the Design Report discusses how each alternative would be addressed: including transaction processing, network communications, security, ITDS applications, data warehouse, backup power supplies, and a backup data center. The ITDS is looking for the most cost-effective means of operating the system over the long term and, toward this end, is seriously considering designing the system to facilitate outsourcing.

Risk Management—The Risk Management section describes a systematic approach to identifying and controlling factors that could adversely affect the implementation of ITDS. It includes the procedures and automated tools to be used in tracking risks, assessing the likelihood of their occurrence, their consequences, and mitigating plans. The ITDS Project Office has identified ten risks, which are included in this section.

Configuration Management—The Configuration Management section provides a framework for identifying and managing changes to the ITDS. It recommends policies, methodologies, and processes for the design control and includes the use of automated tools and review boards. It establishes the mechanism for identifying and evaluating costs, schedule, and performance impacts of proposed changes against established baselines.

Data Standardization—This section details the efforts undertaken by the ITDS Project Office to arrive at a set of common data elements for imports, exports, and in-transit shipments, including data specific to the conveyance, cargo, and people (drivers and crews of commercial conveyances). Conditional data elements are also included that are specific to a particular commodity, country, or agency. Optional data elements have also been identified that are accepted and stored by ITDS at the option of the filer. Government provided data that is generated as a result of internal ITDS system processing complete the standard data set.

Cost/Benefit—The Cost/Benefit section begins the work of estimating the financial impact of implementing the ITDS. Using available data, this section currently includes estimates of the effects of reducing the burden on the trade community associated with filing government forms required by the import and export processes. Though hard num-

bers are difficult to obtain and methodologies for determining costs and benefits can be challenged, initial estimates indicate that the international trade community could save \$8.9 billion of filing costs over the expected life of the ITDS (through 2005). This translates to a net benefit of \$2 billion, or a benefit of \$9 for every \$1 spent. Initial cost estimates for the implementation of the ITDS are approximately \$256 million through the end of 2005. This section also applies sensitivity tests to the estimates and reaches a confident conclusion that, even at this initial stage, it is clear that the benefits for the ITDS implementation substantially exceed the expected costs.

Interested parties (importers, exporters, brokers, carriers, and others) are encouraged to review and comment on the ITDS Draft Design Report. Comments should be submitted in writing by November 12, 1998. Delivery is preferred in electronic form, e-mailed to the following address: ITDS@usa.net. Comments submitted on paper can be sent to the Department of the Treasury, International Trade Data System Project Office, 1300 Pennsylvania Avenue, NW, Suite 4000, Washington, D.C. 20229.

A public meeting regarding the ITDS project proposal will be held on Thursday, November 5, 1998 from 9:00 am to 1:00 p.m. The public meeting will take place at the Department of Commerce Auditorium located at 14th Street and Constitution Avenue, NW, Washington, DC. The meeting will provide a briefing on and high-level overview of the proposed system, an opportunity for presentation of representative points of view of industry participants, and a panel discussion of selected questions submitted by the audience. Those attending the meeting are encouraged to review the Draft Design Report before the public meeting.

The November 5 public meeting is open to all, however advance registration is required. To register, contact the ITDS Project Office on (202) 216-2760, or register by e-mail at the ITDS Web Site: www.itds.treas.gov, on or before November 2, 1998. If registering by e-mail, please include name, title, organization, phone number, fax number and email address. Requests to make a presentation should also be submitted to the project office by email or on paper, no later than October 21, 1998. Owing to limited time and the value of including a representative range of perspectives, the project office reserves the discretion to select and limit oral presentations.

The ITDS Board of Directors welcomes any and all comments on the ITDS project as proposed. The Board is also especially interested in feedback by public comment on the following issues:

(1) *Single electronic face for government in the collection of trade data.* One overall goal of the ITDS initiative is to consolidate, streamline, integrate, and organize government information collection and storage processes to provide the trade with a single, common, and electronic interface with the federal government for purposes of collecting information and financial charges (e.g. duties, fees, and other charges) with

respect to international trade transactions. To what extent is our perception correct that elimination of redundant transactions with multiple agencies will benefit private firms, and international trade processes, by reducing direct and indirect administrative costs?

(2) *Standardized data elements, definitions, and declarations across government.* Another major area of emphasis of the ITDS initiative is to simplify and speed up the process of submitting and using information required by the government in connection with international trade transactions by: limiting information submitted to that needed by documented requirements of government agencies; developing common data elements and definitions based to the fullest extent possible on appropriate commercial standards already in use within the international trade community; and standardizing declarations made in connection with imports and exports, across all federal agencies, and ideally, over the longer term, as an international standard acceptable for all governments. Data elements are divided into two categories, "common" and "conditional;" common data elements would be submitted in connection with all international trade transactions, and conditional elements would be submitted on a conditional basis, depending on the nature of the specific transaction. Although such standardization will in some instances require some parties to submit more information in a single submission than they have provided to any one agency in the past, the overall effect of the new approach will be to dramatically reduce the number of different places to which information is submitted (to one), and the total amount of information actually provided (the goal is to move from duplication that is massive to no duplication). What are your reactions to the data elements and definitions as they are proposed, and their classification as common and conditional? Will collection of these data allow the Federal Government to enforce effectively the laws and regulations in which you are interested? What further improvements would you suggest?

(3) *Shared database for shared access and dissemination across agencies.* The ITDS initiative will also simplify and change current government processes by creating in ITDS a single system of international trade data records that is disseminated to and accessible by federal agencies in accordance with their authorized missions. Although private parties will always have access to their own data, strict security controls will be implemented to assure that confidentiality of individual corporate transactions is respected. We seek advice as to which parties (brokers, forwarders, carriers, importer, exporters, others) need access to the record of a transaction, and what should be the limitations of access. For example, to what extent should importers have access to data filed by their customs brokers, carriers, and other service providers, and should the importer be able to alter these data?

(4) *Coordination with the trade in completing ITDS design report and transition planning.* The ITDS Board is committed to coordinating with the trade to receive and consider feedback in shaping the final de-

sign report recommendations, and working with other agencies and organizations and their ongoing activities in doing so. The potential of the ITDS initiative will most likely be realized through assistance from the trade in designing the system and developing plans for transition to the new environment in the future. What recommendations would you make as to the best means for the trade to coordinate with the government in moving to the new ITDS environment? What suggestions would you make as to strategies the government should pursue to minimize the costs and facilitate the changes required to make this transition?

Dated: September 25, 1998.

JOHN P. SIMPSON,
Chairman,
International Trade Data System Board of Directors.

[Published in the Federal Register, October 2, 1998 (63 FR 53125)]

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties Division, at 415-782-9442. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at 202-927-6900.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103-465, 108 Stat. 4809)(signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been

issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

REASONABLE CARE REQUIRED

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon informa-

tion regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1) Has the importer had a prior relationship with the named party?

2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

7) What is the history of this country regarding this commodity?

8) Have you asked questions of your supplier regarding the origin of the product?

9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a biannual publication of the names of the foreign entities and/or persons. On March 17, 1998, Customs published a Notice in the Federal Register (63 FR 13097) which identified 19 (nineteen) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A LIST

For the period ending September 30, 1998, Customs has identified 26 (twenty-six) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 9 new entities and 2 removals to the 19 entities named on the list published on March 17, 1998. The parties on the current list were assessed a penalty claim

under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 26 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 26 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Azmat Bangladesh, Plot Number 22-23, Sector 2 EPZ, Chittagong 4233, Bangladesh. (9/96)

Bestraight Limited, Room 5K, World Tech Centre, 95 How Ming Street, Kwun Tong, Kowloon, Hong Kong. (3/96)

Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368-370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)

Excelsior Industrial Company, 311-313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)

Eun Sung Guatemala, S.A., 13 Calle 3-62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)

Glory Growth Trading Company, No.6 Ping Street, Flat 7-10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)

Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82-86 Wing Lok Street, Central, Hong Kong. (9/98)

Hanin Garment Factory, 31 Tai Yau Street, Kowloon, Hong Kong. (3/96)

Hip Hing Thread Company, No. 10, 6/F Building A, 221 Texaco Road, Waikai Industrial Center, Tsuen Wan, N.T., Hong Kong. (3/96)

Hyattex Industrial Company, 3F, No. 207-4 Hsin Shu Road, Hsin Chuang City, Taipei Hsien, Taiwan. (9/96)

Jentex Industrial, 7-1 Fl., No. 246, Chang An E. Rd., Sec.2, Taipei, Taiwan. (3/97)

Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)

Liable Trading Company, 1103 Kai Tak Commercial Building, 62-72 Stanley Street, Kowloon, Hong Kong. (9/98)

Li Xing Garment Company Limited, 2/F Long Guang Building, Number 2 Manufacturing District, Sanxiang Town, Zhongshan, Guangdong, China. (9/96)

McKowan Lowe & Company Limited, 1001-1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Meigao Jamaica Company Limited, 134 Pineapple Ave., Kingston, Jamaica. (9/96)

Meiya Garment Manufacturers Limited, No. 2 Building, 3/F, Shantou Special Economic Zone, Shantou, China. (9/96)

Poshak International, H-83 South Extension, Part-I (Back Side), New Delhi, India. (3/96)

Rex Industries Limited, VIP Commercial Center, 116-120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)

Sannies Garment Factory, 35-41 Tai Lin Pai road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)

Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1-2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)

Sun Kong Glove Factory, 188 San Wan Road, Units 32-35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)

Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)

Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Topstyle Limited, 6/F, South Block, Kwai Shun Industrial Center, 51-63 Container Port Road, Kwai Chung, New Territories, Hong Kong. (9/96)

Yunnan Provincial Textiles Import & Export, 576 Beijing Road Kunming, Yun Nan, China. (3/96)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

ADDITIONAL FOREIGN ENTITIES

In the March 17, 1998, Federal Register notice, Customs also solicited information regarding the whereabouts of 54 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 54 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 29 entities. This reflects the addition of six new entities to the list and a removal of 31 entities from the list.

Customs is soliciting information regarding the whereabouts of the following 29 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)

Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)

Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)

Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)

Fabrica de Artigos de Vestuario Lei Kou, 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)

Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)

Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)

Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)

Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)

K & J Enterprises, Witty Commercial Building, 1A-1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Kwuk Yuk Garment Factory, Kwong Industrial Building, 39-41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)

Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)

Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)

Lins Fashions S.A., Lot 111, San Pedro de Macoris, Dominican Republic. (9/96)

New Leo Garment Factory Ltd, Galaxy Factory Building, 25-27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)

Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)

Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Round Ford Investments, 37-39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)

Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuan-shin, Shanghai, China. (9/97)

Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)

Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)

United Textile and Weaving, P.O. Box 40355, Sharjah, United Arab Emirates. (3/97)

Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)

Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yung, Kowloon, Hong Kong. (3/98)

Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5-8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)

Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)

Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 29 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dated: September 29, 1998.

ROBERT S. TROTTER,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, October 5, 1998 (63 FR 53493)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 30, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED MODIFICATION OF RULING LETTERS RELATING
TO THE USE OF NON-COASTWISE-QUALIFIED VESSELS IN
TOWING ASSISTANCE OPERATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103-182, 107 Stat. 2057) this notice advises interested parties that Customs intends to modify two rulings pertaining to the use of non-coastwise-qualified vessels in towing assistance operations in U.S. waters. Comments are invited on the correctness of the proposed modification.

DATE: Comments must be received on or before November 13, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Entry Procedures and Carriers Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Entry Procedures and Carriers Branch, Office of Regulations and Rulings (202) 927-2320.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation

Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify two rulings pertaining to the use of non-coastwise-qualified vessels in towing assistance operations in U.S. waters. Customs invites comments on the correctness of the proposed modification.

Title 46, United States Code Appendix, section 316(a) (46 U.S.C. App. 316(a), the coastwise towing statute) prohibits the use of any vessel not having in force a certificate of documentation endorsed for the coastwise trade (46 U.S.C. 12106) to tow any vessel other than a vessel in distress, from any point or place embraced within the coastwise laws of the United States to another such port or place, either directly or by way of a foreign port or place, or for any part of such towing.

Points embraced within the coastwise laws include all points within the territorial waters of the United States, including points within a harbor. The territorial waters of the United States consist of the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and coastline differ.

In Headquarters ruling letters (HRLs) 108406, dated July 3, 1986, and 108053, dated February 28, 1986, Customs held, *inter alia*, that the prohibition set forth in 46 U.S.C. App. section 316(a), " * * * applies only to the towing or pushing of vessels, so it would not preclude the use of Canadian-flag tugs for docking, undocking, or assistance, if such use involved no towing or pushing of vessels." HRLs 108406 and 108053 are set forth as Attachments A and B to this document, respectively.

Upon further review of HRLs 108406 and 108053, we have concluded that this holding thwarts the protectionist intent of the subject statute and is in conflict with prior and subsequent HRLs on this issue (see, 102240, dated November 4, 1976; 103910, dated August 15, 1979; 104220, dated October 17, 1979; and 108922, dated May 15, 1987).

Therefore Customs intends to modify HRLs 108406 and 108053 so that they are in accord with the holdings of the above-cited HRLs which include the use of a non-coastwise-qualified vessel for assistance in docking or undocking (i.e., berthing operations), with those activities (i.e., towing or pushing) to which the prohibition set forth in 46 U.S.C. App. section 316(a) applies. Proposed HRL 114346 is set forth in Attachment C to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: August 19, 1998.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
Washington, DC, July 3, 1986.

VES-10-03-CO:R:CD:C
108406 PH
108055

MR. RONALD C. RASMUS
PRESIDENT
GREAT LAKES TOWING COMPANY
1800 Terminal Tower
Cleveland, OH 44113

DEAR MR. RASMUS:

In your letter of June 2, 1986, you request our interpretation of the effect of the recent amendment to the coastwise towing statute, 46 U.S.C. 316(a), on the advice we gave you in our letter of February 28, 1983. That letter responded to a number of specific questions you raised in your letters of November 22 and 27, 1985.

Public Law 99-307, effective on May 19, 1986, amended 46 U.S.C. 316(a) "(1) by striking all from 'a certificate of registry' through 'the Act of June 7, 1918, as amended (U.S.C., 1934 edition, Supp. IV, title 46, sec. 288),' and substituting 'a certificate of documentation issued under section 12106 or 12107 of title 46, United States Code,'; and (2) by striking 'a vessel of foreign registry, or a vessel in distress, and substituting 'a vessel in distress'." The amended statute now prohibits any vessel not having in force a coastwise or Great Lakes license from towing any vessel, other than a vessel in distress, between ports or places embraced within the coastwise laws of the United States, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel from point to point within the harbors of such places. The penalties for violation of this statute remain a fine of not less than \$250 to \$1,000 against the owner and master of the towing vessel and \$50 per ton on the measurement of the towed vessel against the towing vessel.

The amendment to 46 U.S.C. 316(a) would not change our advice on the particular salvage operation you described in your November letters, the salvage of the OLYMPIC LEADER after it was grounded south of Nebbish Island in Lake Munuscong. The Treaty of 1908 and 46 U.S.C. 725 are not affected by Public Law 99-307.

The other questions you raised, in the order you asked them and we addressed them in our February 28 letter, are affected as follows:

1.(a) Not affected.

1.(b) Except for towing which is necessarily incident to salvage permitted under the Treaty of 1908 and 46 U.S.C. 725, or the towing of a vessel in distress, Canadian-flag tugs may not engage in the in-port towing (including pushing) in any United States port of United States-flag or foreign (including Canadian)-flag vessels. This prohibition, under 46 U.S.C. 316(a), applies only to the towing or pushing of vessels, so it would not preclude the use of Canadian-flag tugs for docking, undocking, or assistance, if such use involved no towing or pushing of vessels other than vessels in distress in United States ports, nor would it preclude the towing or pushing of "equipment" which is not a vessel.

1.(c) See 1.(b), above. The towing between United States ports of any vessel, except a vessel in distress, is prohibited to any vessel other than a coastwise-qualified vessel. Thus, a Canadian-flag tug would be prohibited from such towing of a foreign (including Canadian)-flag vessel.

1.(d) Insofar as United States law is concerned, Canadian-flag tugs may engage in the towing of any vessel between a United States port and a Canadian port, provided, that the tow is not part of an overall tow of a vessel other than a vessel in distress between United States ports (see 46 U.S.C. 316(a)).

1.(e) If the assistance provided to vessels transiting the United States Soo Locks and St. Mary's River approaches consists of towing or pushing, such assistance to vessels other than vessels in distress must be by United States coastwise-qualified vessels if the assistance commences and terminates in United States waters. Otherwise, you should be guided by our September 16, 1983 (VES-10-03-CO:R:CD:C 106326 KP), letter to you.

2.(a) and (b)-(e) Not affected.

As we stated in our February 28 letter, we have sent copies of your letters and a related complaint from the Pacific Northwest to the United States Department of State with the request that that Agency investigate the matter, in view of the statutory provisions for reciprocity. We have not heard from the State Department regarding this matter. We are sending a follow-up letter to the State Department with copies of your most recent letter and this letter.

EDWARD B. GABLE, JR.
*Director,
Carriers, Drawback and Bonds Division.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 28, 1986.
VES-10-03-CO:R:CD:C
108053 PH

MR. RONALD C. RASMUS
PRESIDENT
GREAT LAKES TOWING COMPANY
1800 Terminal Tower
Cleveland, OH 44113

DEAR MR. RASMUS:

Your letters of November 22 and 27, 1985, concern our interpretation and application of 46 U.S.C. 316, both with regard to a particular situation and in general. You state that on this past November 20 the foreign-flag vessel M/V OLYMPIC LEADER grounded south of Nebbish Island, Michigan, in Lake Munuscong in United States waters while making its approach on an upbound transit of the Soo Locks. Your company offered salvage assistance to the OLYMPIC LEADER but was refused and the owners of the vessel utilized the services of a Canadian towing company, Purvis Marine, and their Canadian tug to perform the salvage.

Because you believe this to be a violation of 46 U.S.C. 316, you checked with Customs in Sault Ste. Marie. You state that Customs advised you that a treaty between Canada and the United States permitted the Canadian tug company to operate in United States waters "whether or not the vessel was in distress, needed salvage service or, for that matter, a normal tow." You ask whether Canadian-flag tugs may engage in certain activities when United States-flag tugs are available.

Section 4370(a) of the Revised Statutes, as amended (46 U.S.C. 316(a)), provides that it shall be unlawful for any vessel not wholly owned by a citizen of the United States and not having in force a certificate of registry, certificate of enrollment, or other named document to tow any vessel, other than a foreign-flag vessel or a vessel in distress, between ports or places embraced within the coastwise laws of the United States, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel from point to point within the harbors of such places. The penalties for violation of this statute are a fine of not less than \$250 to \$1000 against the owner and master of the towing vessel and \$50 per ton on the measurement of the towed vessel against the towing vessel.

Both Houses of the Congress recently passed a bill, H.R. 2466, which would have amended this law. This amendment would have made the prohibition in 46 U.S.C. 316(a) applicable to any vessels except those having in force a coastwise or Great Lakes license. This part of the amendment would have ratified Customs already existing interpretation of 46 U.S.C. 316(a). The amendment also would have deleted the exemption for foreign-flag vessels so that an unqualified vessel would be prohibited from towing any vessel, other than a vessel in distress, between coastwise points. This bill was vetoed by the president.

Section 4370(d) of the Revised Statutes, as amended (46 U.S.C. 316(d)), provides, in part, that:

No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or

their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States of the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title * * *.

Section 4370(e) of the Revised Statutes, as amended (46 U.S.C. 316(e)), provides, in part, that nothing in section 4370, Revised Statute (46 U.S.C. 316), shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the United States and Great Britain signed in Washington on May 18, 1908 (35 Stat. 2036). This treaty provides that vessels and wrecking appliances from the United States or Canada may save any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends and in Lakes Ontario, Erie, St. Clair, Huron, and Superior, the Rivers Niagara, Detroit, St. Clair and Ste. Marie, the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of 30 miles from the International Boundary on such Coasts. The treaty also provides that these reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto. Vessels from either country employed in salving in the waters of the other are required to make a full report as soon as practicable at the nearest customhouse of the country in whose waters the salving took place.

The Act of June 19, 1878 (20 Stat. 175; 46 U.S.C. 725), as amended, referred to in 46 U.S.C. 316(d), provides that Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels, and property wrecked, disabled, or in distress in the waters of the United States contiguous to Canada. This statute provides that it shall be construed to apply to the canal and improvement of the waters between Lakes Erie and Huron, and to the waters of the St. Mary's River and canal. The statute also provides that it shall cease to be in force from the date of a Presidential Proclamation to the effect that Canada has withdrawn, revoked, or rendered inoperative the reciprocal privileges provided for in the statute.

With regard to the particular salvage operation you describe, that of the OLYMPIC LEADER after it was grounded south of Nebbish Island in Lake Munuscong, the Treaty of 1908 and 46 U.S.C. 725 permit the use of a Canadian-flag vessel for this salvage, as well as any towing incident to the salvage.

We will answer the series of questions you raise, in the order asked, on the basis of the statutory authorities described above.

1.(a) Canadian-flag tugs may engage in salvage work in the United States waters or ports listed in the Treaty of 1908 and 46 U.S.C. 725 for United States-flag vessels or equipment, foreign-flag vessels or equipment, and Canadian-flag vessels or equipment.

1.(b) Except for towing which is necessarily incident to salvage permitted under the Treaty of 1908 and 46 U.S.C. 725, or the towing of a vessel in distress, Canadian-flag tugs may not engage in the in-port towing (including pushing) in any United States port of United States-flag vessels. Canadian-flag tugs may engage in such towing of foreign (including Canadian)-flag vessels. This prohibition, under 46 U.S.C. 316(a), applies only to the towing, or pushing, of vessels, so it would not preclude the use of Canadian-flag tugs for docking, undocking, or assistance, if no towing or pushing were involved of vessels other than foreign-flag vessels or vessels in distress in United States ports, nor would it preclude the towing, or pushing, of "equipment" which is not a vessel.

1.(c) See 1.(b), above. The towing between United States ports of any vessel, except a foreign-flag vessel or a vessel in distress, is prohibited to any vessel other than a coastwise-qualified vessel. Thus, a Canadian-flag tug would not be prohibited from such towing of a foreign (including Canadian)-flag vessel.

1.(d) Insofar as United States law is concerned, Canadian-flag tugs may engage in the towing of any vessel between a United States port and a Canada port, *provided*, that the tow is not part of an overall tow of a vessel other than a foreign-flag vessel or a vessel in distress between United States ports (see 46 U.S.C. 316(a)).

1.(e) If the assistance provided to vessels transiting the United States Soo Locks and St. Mary's River approaches consists of towing, or pushing, such assistance to vessels other than foreign-flag vessels or vessels in distress must be by United States coastwise-qualified vessels if the assistance commences and terminates in United States waters. Otherwise, you should be guided by our September 16, 1983

(VES-10-03-CO:R:CD:C 106326 KP), letter to you, copy enclosed for your convenience.

2.(a) Although we cannot comment authoritatively on whether United States-flag tugs are permitted by Canada to engage in salvage operations in Canadian waters, under the Treaty of 1908 and the reciprocal privileges granted under 46 U.S.C. 725, we believe United States-flag tugs should be permitted to engage in the salvaging of any vessels or equipment in the waters described in those provisions.

2.(b)-(e) We do not know what restrictions Canada places on towing in its waters and between its ports and are unable to comment on these questions.

With regard to your allegation that United States-flag tugs are routinely prohibited by Canadian Customs authorities from towage and salvage assistance to Canadian and foreign-flag vessels in Canadian waters and ports, we are sending a copy of your letter with a copy of a related complaint from the Pacific Northwest regarding the permitted use of Canadian-flag vessels in the United States and the denial of permission for a similar use of United States-flag vessels in Canada, to the United States Department of State. We are asking that Agency to investigate this matter, in view of the provisions for reciprocity in the Treaty of 1908 and 46 U.S.C. 725.

EDWARD B. GABLE, JR.,
Director,
Carriers, Drawback and Bonds Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

VES-10-03-RR:IT:EC 114346 GEV
Category: Carriers

RONALD C. RASMUS
PRESIDENT
THE GREAT LAKES TOWING COMPANY
1800 Terminal Tower
50 Public Square
Cleveland, OH 44113-2274

Re: Foreign-Flag Tug; Towing Assistance; 46 U.S.C. App. § 316(a).

DEAR MR. RASMUS:

This is in response to your letter of July 14, 1998, and fax of July 24, 1998, to Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings (OR&R), regarding the use of a Canadian-flag tug in U.S. waters. Our ruling on this matter is set forth below.

Facts:

At 0215 hours on July 12, 1998, the W.I. SCOTT PURVIS, a Canadian-flag tug, commenced towing assistance to the MARINETTE, a Norwegian-flag vessel, in U.S. waters on the approach to the U.S. MacArthur Lock at Sault Ste. Marie, Michigan and continued to provide such assistance until 0300 hours on July 12, 1998, when the vessel was off the western end of the southeast pier of this approach. Your coastwise-qualified tug MISSOURI was manned and standing by for the MARINETTE and would have otherwise performed the towing assistance.

Issue:

Whether the use of a foreign-flag tug to provide towing assistance services solely within U.S. waters is violative of 46 U.S.C. App. § 316(a).

Law and Analysis:

Title 46, United States Code Appendix, § 316(a) (46 U.S.C. App. § 316(a), the coastwise towing statute) prohibits the use of any vessel not having in force a certificate of documen-

tation endorsed for the coastwise trade (46 U.S.C. 12106) to tow any vessel other than a vessel in distress, from any point or place embraced within the coastwise laws of the United States to another such port or place, either directly or by way of a foreign port or place, or for any part of such towing.

Points embraced within the coastwise laws include all points within the territorial waters of the United States, including points within a harbor. The territorial waters of the United States consist of the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and coastline differ.

In its interpretation of 46 U.S.C. App. § 316(a), Customs has held that towing assistance services provided to facilitate the docking and undocking of a vessel solely within U.S. waters fall within the purview of that statute (HRLs 102240, dated November 4, 1976; 103910, dated August 15, 1979; 104220, dated October 17, 1979; and 108922, dated May 15, 1987). In regard to the towing assistance services provided by the subject Canadian-flag tug as described above, it is Customs position that the prohibitions set forth in the aforementioned statute would apply. HRLs 108053, dated February 28, 1986, and 108406, dated July 3, 1986, are therefore revoked as to this issue.

Holding:

The use of a foreign-flag tug to provide towing assistance services solely within U.S. waters is violative of 46 U.S.C. App. § 316(a).

JERRY LADERBERG,

Chief,

Entry Procedures and Carriers Branch.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "STICK-ON EARRINGS"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of articles described as "Stick-On Earrings" under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before November 13, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, General Classification Branch (202) 927-2404.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of articles identified as "Stick-On Earrings" under the HTSUS. The "earrings" are plastic stickers printed on plastic film and come in a variety of designs, shapes and printed motifs. The stickers are pre-cut and consist of film heat sealed over a foam inner layer giving the stickers a "three-dimensional" aspect. Additionally, the stickers have an adhesive back which allows them to be peeled from a release paper. They are displayed on a paperboard retail card resembling a calendar. Comments are invited on the correctness of the proposed ruling.

In New York Ruling Letter C83853 dated February 5, 1998, stick-on earrings which incorporated pictures and/or designs were classified in heading 3926, HTSUS. However, in Headquarters Ruling Letter (HRL) 955861 dated February 9, 1994, we held that, pursuant to Note 2 to section VII, HTSUS, an article identified as "Little Gems Stick-on Earrings," which consisted of plastic stickers which incorporated pictures and/or designs and were designed to decorate and adorn was classifiable under subheading 4911.91.4040, HTSUS, the provision for "Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Other, Other." See also HRL 954158 dated September 16, 1993. NYRL C83853 is set forth as Attachment A. HRL 955861 and 954158 are set forth as attachments B and C, respectively.

We are of the opinion that the subject articles are virtually identical to the merchandise classified in HRL 955861 and 954158. As such, they are classified under subheading 4911.91.4040, HTSUS. Accordingly, Customs intends to modify NYRL C83853 to reflect the proper classification of the stick-on earrings under subheading 4911.91.4040, HTSUS. Proposed Headquarters Ruling Letter 961400 modifying NYRL C83853 is set forth in Attachment D to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 25, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 5, 1998.

CLA-2-71-RR:NC:SP:233 C83853
Category: Classification
Tariff No. 3926.40.0000,
7117.19.9000, and 7117.90.7500

MR. GORDON C. ANDERSON
C.H. ROBINSON INTERNATIONAL, INC.
8100 Mitchell Road
Eden Prairie, MN 55344-2231

Re: The tariff classification of imitation jewelry and stick-on earrings from China or Taiwan.

DEAR MR. ANDERSON:

In your letter dated January 22, 1998, on behalf of Hanover Accessories, you requested a tariff classification ruling.

The following samples were submitted with your request:

1. Item #636002, which consists of thirty pairs of stick-on earrings. They are made of plastic and consist of a variety of designs, shapes and printed motifs, and have pressure sensitive adhesive backs. They are displayed on a paperboard retail card resembling a calendar. The approximate FOB unit cost is 20 cents.

2. Item #648010, which consists of thirty pairs of stick-on earrings. They are made of plastic and consist of a variety of designs, shapes and printed motifs, and have pressure sensitive adhesive backs. They are displayed on a paperboard retail card resembling a calendar. The approximate FOB unit cost is 20 cents.

3. Item #648106, which consists of seven pairs of stick-on earrings and seven matching plastic imitation gemstone rings. The earrings and rings are displayed on a paperboard retail card resembling a weekly calendar, a set to be worn each day, Sunday through Saturday. The approximate FOB unit cost for the set is 53 cents; the rings are 6.5 cents each and the fourteen earrings total 7.5 cents in cost.

4. Item #647-761, which consists of six assorted metal rings with adjustable bands in a heart-shaped container. The container is made of pink plastic with a clear hinged cover which opens to a form fitted white foam fabric covered ring holder which holds the rings. A textile cord is attached to the top of the container which a child can use to wear around the neck. It is attached to a paperboard header card. The estimated FOB unit value of the item will be either 56 cents a set (8 cents per ring and 8 cents for the heart necklace), or 62 cents a set (8 cents per ring and 14 cents for the heart necklace).

5. Item #110/316, which consists of fifteen pairs of "Snowden" stick-on earrings. They are made of plastic and consist of a variety of designs and shapes in a Christmas motif, and have pressure sensitive adhesive backs. They are displayed on a paperboard retail card with a Christmas design. The approximate FOB unit price per card is 37 cents or 1.2 cents for each earring.

The samples will be retained for official purposes.

The applicable subheading for the stick-on earrings, items #636002, 648010, 110/316, and those in item #648106, will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: statuettes and other ornamental articles. The rate of duty will be 5.3% ad valorem.

The applicable subheading for the metal rings and heart shaped container, item #647-761, will be 7117.19.9000, HTS, which provides for imitation jewelry: of base metal, whether or not plated with precious metal: other: other: other. The rate of duty will be 11% ad valorem.

The applicable subheading for the plastic imitation gemstone rings in item #648106 will be 7117.90.7500, HTS, which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 9, 1994.
CLA-2 CO:R:C:F 955861 GGD
Category: Classification
Tariff No. 4911.91.4040

AREA DIRECTOR OF CUSTOMS
JFK AIRPORT AREA
Building 178
Jamaica, NY 11430

Re: Decision on Application for Further Review of Protest No. 1001-93-100783, filed February 10, 1993, concerning the classification of "Little Gems Stick-on Earrings." The items are imported from Taiwan.

DEAR SIR:

This is a decision on a protest timely filed, against your decision in the classification and liquidation in November 1992, of "Little Gems Stick-on Earrings" that were entered in April 1992.

Facts:

You classified the merchandise under subheading 4911.91.4040, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Other, Other." The goods were dutiable at 3.1 percent ad valorem. Protestant claims that the merchandise should be classified under subheading 9503.90.6000, HTSUSA, the provision for other toys (except models), not having a spring mechanism; and that the goods should be free of duty under subheading 9902.71.13, HTSUSA (which provides in pertinent part that, if subject to a general column one rate of duty, articles [except parts] provided for in heading 9503, valued not over five cents per unit, are duty free).

Although no samples were submitted, photographs of various packages of stick-on items, marketing information, copies of the invoice and entry documents, and communications with Customs in New York, indicate that the articles are comprised of plastic in a variety of shapes and colors, with one adhesive surface that may be attached to a wide array of surfaces in addition to the ears and skin, such as clothes, books, walls, etc. The items are resilient (i.e., they return to original form after being squeezed) and contain pictures and/or designs. The stick-on items of all types are imported in bulk.

Issue:

Whether the merchandise is properly classified in subheading 9503.90.6000, HTSUSA, as other toys not having a spring mechanism; in subheading 3926.40.0000, HTSUSA, as other articles of plastics, statuettes and other ornamental articles; or in subheading 4911.91.4040, HTSUSA, as other printed matter, pictures, designs and photographs.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all

goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 9503, HTSUSA, applies to "other toys," i.e., all toys not specifically provided for in the other headings of chapter 95. Although the term "toy" is not defined in the tariff, the EN to chapter 95 indicates that a toy is an article designed for the amusement of children or adults. Although they may provide some amusement, the stick-on earrings are not designed for amusement, but for adornment, decoration, and ornamentation. Thus, the items may not be classified as other toys.

Heading 3926, HTSUSA, provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicates that the heading covers articles of plastics or other materials not elsewhere included or specified, including (among other items) statuettes and other ornamental articles.

Although the stick-on articles are designed to decorate and adorn, they also incorporate pictures and/or designs. Chapter 39 falls within section VII, HTSUSA. In pertinent part, note 2 to section VII states that "plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49." Since the subject items are designed for decoration, it follows that any printing that they incorporate is consistent with their use as ornamental articles. Thus, the motifs and pictorial representations are more than incidental to the primary use of these items, requiring classification in chapter 49.

Heading 4911, HTSUSA, provides for "Other printed matter, including printed pictures and photographs." The EN to heading 4911 indicates that the heading covers all printed matter that is not more particularly covered by the preceding headings of the chapter. At the six-digit subheading level, 4911.91, HTSUSA, includes other printed matter, pictures, designs, and photographs. Since the "Little Gems Stick-on Earrings" contain pictures and/or designs, they are classified in subheading 4911.91.4040, HTSUSA.

Holding:

The "Little Gems Stick-on Earrings" are classified in subheading 4911.91.4040, HTSUSA, the provision for "Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Other, Other." The general column one duty rate applicable to this merchandise in 1992 was 3.1 percent ad valorem.

The protest should be denied in full. A copy of this decision should be attached to the Form 19 to be returned to the protestant.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS, and to the public via the Diskette Subscription Service, Lexis, the Freedom of Information Act and other public access channels.

JOHN DURANT,

*Director,
Commercial Rulings Division.*

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 16, 1993.
CLA-2 CO:R:C:F 954158 GGD
Category: Classification
Tariff No. 3926.40.0000,
4911.91.4040, and 4911.99.8000

AREA DIRECTOR OF CUSTOMS
JFK AIRPORT AREA
Building 178
Jamaica, NY 11430

Re: Decision on Application for Further Review of Protest No. 1001-93-100475, filed January 26, 1993, concerning the classification of "stick-on earrings." The items are imported from Taiwan.

DEAR SIR:

This is a decision on a protest filed January 26, 1993, against your decision in the classification and liquidation in November 1992, of "stick-on earrings" that were entered in March 1992.

Facts:

You classified the merchandise under subheading 3926.90.9090 (which is now 3926.90.9590), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other." The goods were dutiable at 5.3 percent ad valorem. Protes-tant claims that the merchandise should be classified under subheading 9503.90.6000, HTSUSA, the provision for other toys (except models), not having a spring mechanism; and that the goods should be free of duty under subheading 9902.71.13, HTSUSA (which provides in pertinent part that, if subject to a general column one rate of duty, articles [except parts] provided for in heading 9503, valued not over five cents per unit, are duty free).

Although no samples were submitted, photographs of various packages of stick-on items, marketing information, copies of the invoice and entry documents, and communications with Customs in New York, indicate that the articles are comprised of plastic in a variety of shapes and colors, with one adhesive surface that may be attached to a wide array of surfaces in addition to the ears and skin, such as clothes, books, walls, etc. The items are resilient (i.e., they return to original form after being squeezed) and may contain pictures, designs, characters, symbols, letters, etc. The stick-on items of all types are imported in bulk.

Issue:

Whether the merchandise is properly classified in subheading 9503.90.6000, HTSUSA, as other toys not having a spring mechanism; in subheading 3926.90.9590, HTSUSA, as other articles of plastics, other; in subheading 3926.40.0000, HTSUSA, as other articles of plastics, statuettes and other ornamental articles; in subheading 4911.91.4040, HTSUSA, as other printed matter, pictures, designs and photographs; or in subheading 4911.99.8000, HTSUSA, as other printed matter, other than pictures, designs and photographs.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 9503, HTSUSA, applies to "other toys," i.e., all toys not specifically provided for in the other headings of chapter 95. Although the term "toy" is not defined in the tariff, the

EN to chapter 95 indicates that a toy is an article designed for the amusement of children or adults. Although they may provide some amusement, the stick-on earrings are not designed for amusement, but for adornment, decoration, and ornamentation. Thus, the items may not be classified as other toys.

Heading 3926, HTSUSA, provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicates that the heading covers articles of plastics or other materials not elsewhere included or specified, including (among other items) statuettes and other ornamental articles.

At the six-digit subheading level, 3926.40, HTSUSA, includes other articles of plastics, statuettes and other ornamental articles, while 3926.90 covers other articles of plastics, other. In other words, subheading 3926.90 is a basket provision for other articles of plastics less specifically described than articles classifiable in subheadings 3926.10-.40. In light of the fact that the stick-on articles are designed to decorate and adorn, the "stick-on earrings" that contain no printed matter (i.e., no pictures, designs, characters, symbols, letters, etc.) are classified in subheading 3926.40.0000, HTSUSA, as other articles of plastics, statuettes and other ornamental articles.

As noted in the facts, some of the stick-on items may contain pictures, designs, characters, symbols, letters, etc. Chapter 39 falls within section VII, HTSUSA. In pertinent part, note 2 to section VII states that "plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49." Since the stick-on items are designed for decoration, it follows that any printing that they incorporate is consistent with their use as ornamental articles. Thus, the motifs, characters or pictorial representations are more than incidental to the primary use of these items, requiring classification in chapter 49.

Heading 4911, HTSUSA, provides for "Other printed matter, including printed pictures and photographs." The EN to heading 4911 indicates that the heading covers all printed matter that is not more particularly covered by the preceding headings of the chapter. At the six-digit subheading level, 4911.91, HTSUSA, includes other printed matter, pictures, designs, and photographs, while 4911.99 covers other printed matter, other than pictures, designs, and photographs (such as characters, symbols, and letters). Therefore, the "stick-on earrings" which bear printed matter consisting of pictures or designs are classified in subheading 4911.91.4040, HTSUSA, while the items that include printed matter in the form of characters, symbols, or letters are classified in subheading 4911.99.8000, HTSUSA.

Holding:

The "stick-on earrings" that incorporate no printed matter are classified in subheading 3926.40.0000, HTSUSA, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." The general column one duty rate applicable to this merchandise in 1992 was 5.3 percent ad valorem.

The "stick-on earrings" that incorporate other printed matter consisting of pictures or designs are classified under subheading 4911.91.4040, HTSUSA, the provision for "Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Other, Other." The general column one duty rate applicable to this merchandise in 1992 was 3.1 percent ad valorem.

The "stick-on earrings" that incorporate other printed matter consisting of characters, symbols, or letters are classified under subheading 4911.99.8000, HTSUSA, the provision for "Other printed matter, including printed pictures and photographs: Other: Other: Other: Other." The general column one duty rate applicable to this merchandise in 1992 was 4.9 percent ad valorem.

You are instructed to deny the protest, except to the extent reclassification of the merchandise as indicated above results in a net duty reduction and partial allowance. A copy of this decision should be attached to the Form 19 to be returned to the protestant.

JOHN DURANT,

Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 961400 MMC
Category: Classification
Tariff No. 4911.91.4040,
7117.90.7500, and 7117.19.9000

MR. GORDON C. ANDERSON
C.H. ROBINSON INTERNATIONAL, INC.
8100 Mitchell Road
Eden Prairie, MN 55344-2231

Re: Various stick-on earrings, plastic imitation gemstone rings and metal rings with adjustable bands; NYRL C83853 modified.

DEAR MR. ANDERSON:

This is in reference to your February 17, 1998, letter, on behalf of Hanover Accessories, requesting reconsideration of New York Ruling Letter (NYRL) C83853 issued to you on February 5, 1998, concerning the classification of various stick-on earrings, plastic imitation gemstone rings and metal rings with adjustable bands, under the Harmonized Tariff Schedule of the United States (HTSUS). A sample, of the stick-on earrings and metal rings were submitted for our review. In preparing this ruling we have considered the arguments presented in April 2, 1998, meeting.

Facts:

The first two articles are identified as Item #636002 and Item #648010. They consist of 30 pairs of stick-on earrings with a variety of designs, shapes and printed motifs. The "earrings" are plastic stickers printed on plastic film. The stickers are pre-cut and consist of film heat sealed over a foam inner layer giving the stickers a "three-dimensional" aspect. Additionally, they have an adhesive back which allow the stickers to be peeled from a release paper. They are displayed on a paperboard retail card resembling a calendar. The approximate FOB unit cost is 20 cents.

Item #110/3106, consists of 15 pairs of "Snowden" stick-on earrings all displaying a variety of designs and shapes in a Christmas motif. They are displayed on a paperboard retail card with a Christmas design. The approximate FOB unit price per card is 37 cents or 1.2 cents for each earring.

Item #648106, consists of seven pairs of stick-on earrings and seven matching plastic imitation gemstone rings. The earrings and rings are displayed on a paperboard retail card resembling a weekly calendar, two earrings and a ring to be worn each day. The approximate FOB unit cost for the set is 53 cents; the rings are 6.5 cents each and the fourteen earrings total 7.5 cents.

Items #647-761, consist of six assorted metal rings with adjustable bands in a heart shaped container. The container is made of pink plastic with a clear hinged cover. A form fitted white foam piece which holds the rings has been inserted into the container. A textile cord is attached to the top of the container. A paperboard header card is attached to the cord. A paper tag attached to the cord states "L.J. Kids & Co.®" and "by Hanover Accessories." A little cartoon drawn girl appears on the front, with various pieces of jewelry are identified on her body. The estimated FOB unit value of the item will be either 56 cents a set (8 cents per ring and 8 cents for the heart container), or 62 cents a set (8 cents per ring and 14 cents for the heart container).

Issue:

Whether the various stick-on earrings, plastic imitation gemstone rings and metal rings with adjustable bands are classifiable as imitation toy jewelry.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise

require, the remaining GRI's may then be applied. The headings and subheadings under consideration are as follows:

4911	Other printed matter, including printed pictures and photographs
7117	Imitation jewelry: [o]f base metal, whether or not plated with precious metal:
7117.19	Other
7117.19.60	Toy jewelry valued not over 8 cents per piece
7117.19.90	Other
9503.90.0030	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; and parts and accessories thereof: Other: Other: Other toys (except models), not having a spring mechanism

In Headquarters Ruling Letter (HRL) 955861 dated February 9, 1994, and HRL 954158 dated September 16, 1993, we classified, respectively, an article identified as "Little Gems Stick-on Earrings" and some plain and some stick-on earrings with pictures, designs, letters, symbols, characters, etc. In both cases, the stick-ons were comprised of film heat sealed over a foam inner layer giving the stickers a "three-dimensional" aspect and had an adhesive surface that could be attached to a wide array of surfaces in addition to the ears and skin. They came in a variety of shapes and colors and in the instances relative to this case, contained pictures, designs, letters, symbols, characters, etc. They were imported in bulk.

In both cases, we held that although the earrings may have provided some amusement, they were not *designed* for amusement, but for adornment, decoration, and ornamentation. Thus, they were not classified as other toys. Although the stick-on earrings were plastic and designed to decorate and adorn, the "earrings" relative to this case, also incorporated pictures and/or designs. Note 2 to section VII, HTSUS, states that "plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49." Since the subject items were designed for decoration, it followed that any printing that they incorporated was consistent with their use as ornamental articles. Thus, we held that the motifs and pictorial representations were more than incidental to the primary use of these items, requiring classification in chapter 49, HTSUS, specifically, subheading 4911.91.4040, HTSUS, the provision for "[o]ther printed matter, including printed pictures and photographs: [o]ther: Pictures, designs and photographs: [p]rinted not over 20 years at time of importation: [o]ther: [o]ther: [o]ther." In this case, Items #636002, #648010 and #110/3106 are virtually identical in description and use. Therefore, they are also classifiable under subheading 4911.91.4040, HTSUS. NYRL C83853 is now modified to reflect this finding.

Item #648106, consists of seven pairs of stick-on earrings and seven matching plastic imitation gemstone rings. The stick-on earrings are described by heading 4911, HTSUS. Notes 9 and 11 to Chapter 71, HTSUS, state, in pertinent part, that the scope of the term "imitation jewelry" includes any small object of personal adornment (gem-set or not) such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc., not incorporating pearls, precious metal or precious or semiprecious stones. As the plastic rings are listed in the note, they clearly fall within the scope of heading 7117. However, the question remains whether the plastic rings are classifiable as "toy" jewelry for tariff purposes.

The term "toy" is not defined in the HTSUS. In HRL 959961 dated October 30, 1997, we indicated that to be classifiable as "toy jewelry" an article must be "imitation jewelry" as defined in Notes 9(a) and 11 to Chapter 71, HTSUS, and manifest "substantial play value." Furthermore, any claim that an article has "substantial play value" must be corroborated by evidence of that article's principal use. See also HRL 961396 dated August 24, 1998.

When the classification of an article is determined with reference to its principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual

tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

In HRL 959961 dated October 30, 1997, we classified a base metal adjustable ring identified as the "Phantom Ring." The ring was created as a promotional "tie-in" to be distributed in connection with "The Phantom" a major motion picture release by Paramount Pictures. According to the importer the ring had great nostalgic value for "baby-boomers" who were comic-book collectors in their youth. The ring was used as a promotional keepsake for moviegoers.

We determined that the subject "Phantom Ring" was not "toy jewelry" because while its general physical characteristics, adjustable band, etc. indicated its possible use as "toy jewelry", the expectation of the ultimate purchaser, the environment of sale and the manner as merchandise which defines the class all indicated the "Phantom Ring" was a promotional article or piece of memorabilia lacking sufficient "play value."

In this instance, the physical characteristics of the plastic rings are inconclusive as to the ring's classification, because both "regular" and toy imitation jewelry may have an adjustable band and plastic as a constituent material. As no sample or additional *Carborundum* information such as expectation of the ultimate purchaser, channels of trade, environment of sale or use in the same manner as toy imitation jewelry, were provided for the plastic rings, we defer to the classification provided in NYRL C83853, subheading 711790.75, HTSUS. We note that while, the economic practicality of using the plastic rings as general imitation jewelry may be suspect because of their 6.5 cent value, such evidence by itself, cannot alter the original classification.

Because the stick-on earrings and plastic rings are described by two different headings, they cannot be classified according to GRI 1. When goods cannot be classified by applying GRI 1, and if the headings and legal notes do not otherwise require, the remaining pertinent GRIs are applied.

GRI 3 (b) states, in pertinent part, that:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, * * * shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be consulted. The Explanatory Notes (EN), although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN X to GRI 3(b), indicates that for purposes of the GRI 3(b), the term "goods put up in sets for retail sale" means goods which:

- (a) consist of at least two different articles which are *prima facie*, classifiable in different headings;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

As previously noted, the subject goods consist of components which are *prima facie* classifiable under more than one heading. Additionally, the components are put up together to carry out the specific activity of adornment. However, while the importer indicates that the earrings and rings are displayed on a paperboard retail card resembling a weekly calendar, it is not clear that at the time of importation, the earrings and rings were put up in a manner suitable for sale directly to users without repacking. Therefore, item #648106 cannot be considered a "set" for tariff purposes, and each of the articles will be classified separately.

Items #647-761, consist of six assorted metal rings with adjustable bands in a heart-shaped container. The container is made of pink plastic with a clear hinged cover which opens to a form fitted white foam fabric covered ring holder which holds the rings. A textile cord is attached to the top of the container. A paper tag attached to the cord states "L.J. Kids

& Co.®" and by Hanover Accessories. A little cartoon drawn girl appears on the front. Various pieces of jewelry are identified on her body.

As previously noted, to be classifiable as "toy jewelry" an article must be "imitation jewelry" as defined in Notes 9(a) and 11 to Chapter 71, HTSUS, and manifest "substantial play value." Furthermore, any claim that an article has "substantial play value" must be corroborated by evidence of that articles' principal use.

The physical characteristics of these rings indicate that they are designed as articles of personal adornment for girls, not principally to amuse. Their constituent metal is substantial and the gold coloring appears to be a "coating" as opposed to merely spray painted. Based upon our own empirical evidence, it is our understanding that the article will be sold in the children's clothing section of a department store as accessories to the various outfits. Such an environment of sale leads an ultimate purchaser to believe that the articles are used for the adornment of children and not as play articles to "imitate" a grown man or women's jewelry use. Use of the jewelry for personal adornment is a use which defines the "general" imitation jewelry class, not the toy jewelry class. The fact that the articles adorn children does not alter their classification. Rather it is that the articles are used for *personal adornment*, not "play" that indicate they belong to the "general" imitation jewelry class. While, the economic practicality of using the metal rings as general imitation jewelry may be suspect because of their 8 cent value, such evidence by itself, does not alter their classification. The metal rings are classified in subheading 7117.19.90, HTSUS.

Holding:

The applicable subheading for the stick-on earrings, items #636002, 648010, 110/3106, and those in item #648106, will be 4911.91.4040, Harmonized Tariff Schedule of the United States (HTSUS). The 1998 rate of duty is 1.9 percent *ad valorem*.

The applicable subheading for the metal rings and heart shaped container, item #647-761, will be 7117.19.9000, HTSUS, which provides for imitation jewelry: of base metal, whether or not plated with precious metal: other: other: other. The 1998 rate of duty is 11 percent *ad valorem*.

The applicable subheading for the plastic imitation gemstone rings in item #648106 will be 7117.90.7500, HTSUS, which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics. The 1998 rate of duty is free.

NYRL C83853 is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

**PROPOSED MODIFICATION OF RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF KEYCHAIN TOYZ**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of articles described as "Keychain Toyz" under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before November 13, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, General Classification Branch (202) 927-2404.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of articles identified as "Keychain Toyz" under the HTSUS. The subject articles consist of a steel chain with a steel key loop attached to one end and four different egg-shaped plastic articles, identified as "Show 'N Grow", "Color Changer", "Removable Transformer Doggie" and "Flash-A-Gotchi", to the other end. Comments are invited on the correctness of the proposed ruling.

In NYRL C82644 dated January 5, 1998, the "Show 'N Grow", "Color Changer" and "Removable Transformer Doggie" were classified in heading 7326, HTSUS, which provides, in pertinent part, for other articles of iron or steel. "Flash-A-Gotchi" was classified in heading 8513, HTSUS, which provides, in pertinent part, for flashlights. NYRL C82644 is set forth as Attachment A.

We are of the opinion that it is the ring/chain component which provides the essential character of all of the articles. In the case of the

"Flash-A-Gotchi" we are of the opinion that while it functions as a light, the light component does not provide the article with its essential character. Rather, like the other the egg-like components, it is primarily placed at the end of the key chain for decorative purposes. Moreover, we believe that all of the articles will be used predominantly to hold keys. We recognize that these articles are purveyed to the public as a "prize" in a child's meal box. However, they are marketed and displayed and even named as key chains. Furthermore, they are not designed principally to amuse, but rather to hold keys.

Accordingly, Customs intends to modify NYRL C82644 to reflect the proper classification of "Flash-A-Gotchi" under subheading 7326.20.0050, HTSUS. Proposed Headquarters Ruling Letter 961398 modifying NYRL C82644 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 25, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 5, 1998.
CLA-2-73:RR:NC:GI:115 C82644
Category: Classification
Tariff No. 7326.20.0050 and 8513.10.2000

MS. JENNIFER F. KESSINGER
KATTEN MUCHIN & ZAVIS
525 West Monroe Street
Suite 1600
Chicago, IL 60661-3693

Re: The tariff classification of key chains from China.

DEAR MR. KESSINGER:

In your letter dated December 11, 1997, you requested a tariff classification ruling on behalf of your client, M-B Sales of Melmont, IL.

The subject items are described as follows:

1) *Show 'N Grow*—which is an egg-shaped plastic item with an attached steel key ring. When the upper and lower halves of the egg are pulled apart, a character on a color label is revealed.

2) *Flash-A-Gotchi*—which is an egg-shaped plastic item with an attached steel key ring. The front of the item features a screen area with a translucent label and a row of three buttons beneath the translucent label. When the screen is depressed, a light is emitted by a red LED light from a hole at the bottom of the egg. The light is powered by a non-replaceable battery.

3) *Color Changer*—which is an egg-shaped plastic item attached to a steel key ring. On the front of the egg is a therma-chromatic color label. When the heat is applied to the label on the front of the egg (e.g., by rubbing the label), the therma-chromatic label changes to depict a character.

4) *Removable Transformer/Doggie*—which is an item composed of a plastic, removable item enclosed within an egg-shaped hinged plastic item attached to a steel key ring. The egg features a label on the outside and opens on hinges. Inside the egg is a plastic dog-shaped figure. The dog's legs may be pulled down manually. A button on the front of the dog opens and closes the dog's mouth.

Your items are considered composite goods, consisting of different materials or made up of different components. These items shall be classified as if they consisted of the material(s) or component(s) which gives them their essential character. In the instances for the Show 'N Grow, Color Changer and the Removable Transformer/Doggie, the steel key ring(s) imparts the essential character. For the Flash-A-Gotchi, the light portion imparts the essential character.

The applicable subheading for the Show 'N Grow, Color Changer, and the Removable Transformer/Doggie will be 7326.20.0050, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of iron or steel wire, other. The duty rate will be 4.3% ad valorem.

The applicable subheading for the Flash-A-Gotchi will be 8513.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for flashlights. The duty rate will be 15% ad valorem.

Consideration was given to classifying all of these products under subheading 9503.90.0030, HTS, as you have suggested. However, these items are not considered to be toys.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-466-5487.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 961398 MMC
Category: Classification
Tariff No. 7326.20.0050

MS. JENNIFER F. KESSINGER
MR. MARK E. ROLL
KATTEN, MUCHIN & ZAVIS
525 West Monroe Street, Suite 1600
Chicago, IL 60661

Re: NYRL C82644 Modified; Keychain Toyz.

DEAR MS. KESSINGER AND MR. ROLL:

This is in reference to your February 13, 1998, on behalf of M-B Sales, letter requesting reconsideration of New York Ruling Letter (NYRL) C82644 dated January 5, 1998, concerning the classification of four different articles all described as "Keychain Toyz" under the Harmonized Tariff Schedule of the United States (HTSUS). Samples were submitted for our examination. In preparing this decision consideration was also given to arguments presented by counsel in a meeting held on July 20, 1998, and a supplemental submission of August 18, 1998.

Facts:

The subject articles consist of a steel chain with a steel key loop attached to one end and four different egg-shaped plastic articles to the other. Those articles are described as:

- 1) **Show 'N Grow:** The egg's upper and lower halves pull apart to reveal a character on a color label.
- 2) **Flash-A-Gotchi:** The egg's front features a screen area with a translucent label with a row of three buttons beneath. When the screen is depressed, a red LED light is emitted from a hole at the bottom of the egg. The light is powered by a non-replaceable battery.
- 3) **Color Changer:** The egg's front is a thermachromatic color label. When heat is applied to the label (e.g., by rubbing the label), the thermachromatic label changes to depict a character.
- 4) **Removable Transformer/Doggie:** A plastic dog figure which is attached to the end of the key chain. The dog's legs may be pulled down manually. A button on the front of the dog opens and closes the dog's mouth. The figure is encased in an egg-shaped, hinged, plastic item which opens and closes allowing the key chain to be removed from the egg-shaped case. The egg features a label on the outside. Inside the egg is a plastic dog-shaped figure.

In NYRL C82644, the "Show 'N Grow", "Color Changer" and "Removable Transformer Doggie" were classified in heading 7326, HTSUS, which provides, in pertinent part for other articles of iron or steel. "Flash-A-Gotchi" was classified in heading 8513, HTSUS, which provides, in pertinent part, for flashlights.

Issue:

Whether the "Keychain Toyz" are classifiable as toys for tariff purposes.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the Harmonized System is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The headings under consideration are as follows:

- | | |
|------|--|
| 9503 | Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof |
| 7326 | Other articles of iron or steel |
| 8513 | Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof |

No one heading of the HTSUS, specifically provides for the "Keychain Toyz" as a whole. The plastic egg-like component, and the plastic dog of the "Keychain Toyz" are described by heading 9505, HTSUS. The light component of the "Flash-A-Gotchi" is described by heading 8513, HTSUS. The ring and chain components are described by heading 7326, HTSUS, as an article of iron or steel. As no one heading describes the articles as a whole, the "Keychain Toyz" are considered composite goods consisting of both toy, metal and, in the case of the "Flash-A-Gotchi", flashlight components. As such, they cannot be classified according to GRI 1.

GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the key chain is imported in a finished complete condition. GRI 2(b) states, in pertinent part, that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. The classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. As the key chain is a

composite good, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." We must determine whether the egg-shaped plastic/figurine components or the metal key ring component imparts the essential character to this article.

You claim that the essential character of the key ring is imparted by the egg-like component because it comprises the substantial majority of the weight, value and bulk of the article. We disagree. We believe that, in this instance, these factors do not resolve the issue of essential character. It is the role of the constituent materials in relation to the use of the goods that imparts the essential character.

Customs has consistently held that, when a key chain has both a functional and non-functional component it is the functional component which provides the article's essential character. See Headquarters Ruling Letter (HRL) 950636, dated January 16, 1992. Further, in HRL 960118 dated July 28, 1997, we determined that a functional key chain/ring, not a voice synthesizer comprised a key ring's essential character. See also, HRL 959473 dated April 8, 1997 and HRL 958452 dated July 3, 1996.

Concerning the subject articles, it is the ring/chain component which makes up the utilitarian portion of the article. In the case of the "Flash-A-Gotchi" we are of the opinion that while it functions as a light, the light component does not provide the article with its essential character. Rather, like the other the egg-like components, it is primarily placed at the end of the key chain for decorative purposes. Moreover, we believe that all of the articles will be used predominantly to hold keys. We recognize that these articles are purveyed to the public as a "prize" in a child's meal box. However, they are marketed and displayed and even named as key chains. Furthermore, they are not designed principally to amuse, but rather to hold keys. Finally, we note that you cite several New York Ruling Letters in which Customs determined that the essential character of a toy/key chain combination was the toy component. It is our understanding that in those instances, the manipulative play value of the toy so outweighed any potential functional aspect of the key chain, that the toy component provided the article with its essential character. Such is not the case in this instance. We therefore, find that it is the metal key ring component that imparts the "KeychainToyz" essential character. As such all of the "Keychain Toyz" are classifiable in subheading 7326.20.0050, HTSUS, as: [o]ther articles of iron or steel: [a]rticles of iron or steel wire: [o]ther, with a column one duty rate of 4.3 percent *ad valorem*. NYRL C82644 is modified to reflect this position.

Holding:

All of the "Keychain Toyz" are classifiable in subheading 7326.20.0050, HTSUS, as: [o]ther articles of iron or steel: [a]rticles of iron or steel wire: [o]ther, with a column one duty rate of 4.3 percent *ad valorem*. NYRL C82644 is modified to reflect this position.

JOHN DURANT,

Director,

Commercial Rulings Division.

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO THE CLASSIFICATION OF ORNAMENTAL TRIMMINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter concerning the tariff classification of ornamental trimmings consisting of narrow woven fabrics.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of ornamental trimmings consisting of narrow woven fabrics. Customs invites comments on the correctness of this proposal.

DATE: Comments must be received on or before November 13, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION: Phil Robins, Textile Branch, Office of Regulations and Rulings (202-927-1031).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of narrow woven fabrics under the Harmonized Tariff Schedule of the United States (HTSUS). Customs invites comments on the correctness of this proposal.

New York Ruling Letter (NY) C83218, dated January 13, 1998, incorrectly classified three ornamental narrow woven fabric ribbons under subheading 5808.90, HTSUS, which provides for ornamental trimmings in the piece. NY C83218 is set forth as "Attachment A" to this document. It is now Customs position that the correct classification for these ribbons is under heading 5806, HTSUS, which provides for narrow woven fabrics. Proposed Customs Headquarters Ruling Letter (HQ) 961986 modifying NY C83218 is set forth as "Attachment B" to this document.

Prior to taking this action we will give consideration to any written comments received in a timely manner. Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR § 177.9), will not be entertained for actions occurring on or after the date of the publication of this notice.

Dated: September 28, 1998.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 13, 1998.
CLA-2-58:RR:NC:TA:350 C83218
Category: Classification
Tariff No. 5808.90.0010,
5808.90.0090, and 6002.20.1000

MS. SHEILA ANDREWS
DILLARD DEPARTMENT STORES
11701 Otter Creek Road South
Mabelvale, AR 72103

Re: The tariff classification of three ornamental trimmings and a warp knit open mesh fabric, from Taiwan.

DEAR MS. ANDREWS:

In your letter dated December 18, 1997, you requested a classification ruling.

While you state that all of these materials will be produced in Taiwan, they may be purchased from various vendors in either Hong Kong or Taiwan. Your samples are being returned as requested.

Four representative samples were submitted. The first two items, identified as styles 827TRB27TN, 827TRB32TN, consist of woven trimmings which are composed of varying amounts of metallic, polyester and/or nylon man-made fibers. The materials measure about 2½ inches wide, 30 feet in length, and contain a wire running along the edges which forms the hems.

The third item, style 827TRB62TF, is basically similar in construction to the above two styles, except it is jacquard woven.

The fourth and final item, style 827TRB79TF, consists of a narrow warp knit fabric containing stable open meshes (about ¼"). This material is stated to be composed of flax and nylon man-made fibers, however, we found copper wire also.

You provided the following technical specifications for the four materials:

STYLE	COMPOSITION
827TRB27TN	70% Metallic 30% Nylon
827TRB32TN	55% Metallic 35% Nylon 10% Polyester
827TRB62TF	75% Polyester 25% Metallic
827TRB79TF	85% Flax 15% Nylon

All of these materials, after importation, will be cut to length to make such things as bows or decorate trees, etc.

The applicable subheading for styles 827TRB27TN and 827TRB32TN will be 5808.90.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for *** ornamental trimmings in the piece, *** of other than cotton or man-made fibers. The duty rate will be 6.2 percent ad valorem.

The applicable subheading for style 827TRB62TF will be 5808.90.0010, HTS, which provides for *** ornamental trimmings in the piece, *** of cotton or man-made fibers. The duty rate is 6.2 percent ad valorem.

The applicable subheading for style 827TRB79TF will be 6002.20.1000, HTS, which provides for other knitted or crocheted fabrics, *** of a width not exceeding 30 cm, open work fabrics. The duty rate is 15.2 percent ad valorem.

Styles 827TRB62TF and 827TRB79TF fall within textile category designation 229. Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa. There are no textile restraints for the other two styles.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Barth at 212-466-5884.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 961986 dnm

Category: Classification

Tariff No. 5806.32.1090,

5806.39.3020, and 5808.90.0010

MS. SHEILA ANDREWS

DILLARD DEPARTMENT STORES

11701 Otter Creek Road South

Mabelvale, AR 72103

Re: Modification of NY C83218 concerning three styles of ornamental ribbons.

DEAR MS. ANDREWS:

This is in response to your letter, dated June 9, 1998, requesting reconsideration of New York Ruling Letter (NY) C83218, dated January 13, 1998, regarding the classification of ornamental trimmings and a warp knit open mesh fabric under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Your request for reconsideration dealt only with the three narrow woven fabric ribbons identified as styles 827TRB32TN, 827TRB27TN, and 827TRB62TF and not the open mesh knit fabric identified as style 827TRB79TF.

Facts:

All styles under review are woven ribbons. Each is approximately 2½ inches wide, 30 feet in length, and has hemmed lengthwise edges with a wire inserted in each hem. The ends are

cut at right angles to the side edges. The three styles are made from different materials: style 827TRB32TN is 55 percent metallic, 35 percent nylon, and 10 percent polyester; style 827TRB27TN is 70 percent metallic and 30 percent nylon; and style 827TRB62TF is 75 percent polyester and 25 percent metallic.

The Harmonized Tariff Schedule of the United States Annotated (HTSUSA) provisions under consideration are as follows:

5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive								
*	*	*	*	*	*	*	*	*	*
5806.32	Of man-made fibers:								
5806.32.10	Ribbons								
5806.32.1010	Suitable for the manufacture of typewriter or similar ribbons of heading 9612								
5806.32.1090	Other								
*	*	*	*	*	*	*	*	*	*
5806.39	Of other textile materials:								
5806.39.1000	Of wool or fine animal hair								
5806.39.2000	Of vegetable fibers except cotton								
5806.39.30	Other								
5806.39.3010	Containing 85 percent or more by weight of silk or silk waste								
	Other:								
5806.39.3020	Of metalized yarn								
*	*	*	*	*	*	*	*	*	*
5808	Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles:								
	Braids in the piece:								
*	*	*	*	*	*	*	*	*	*
5808.90.00	Other								
5808.90.0010	Of cotton; of man-made fibers								
5808.90.0020	Other:								

Issue:

Whether the ornamental trimmings identified as styles 827TRB32TN, 827TRB27TN, and 827TRB62TF are classifiable under heading 5808 or 5806 HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. If goods cannot be classified pursuant to GRI 1, then classification shall be according to the remaining GRIs in the order in which they appear. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. They facilitate classification under the HTSUS by offering guidance concerning the scope and meaning of the GRIs, notes, and headings.

Subheading Note 2, Section XI, HTSUSA, provides, in pertinent part:

2.(A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 consisting of the same textile materials.

(B) For the purposes of this rule:

(a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account.

Section XI (wherein chapter 58 is located), note 2(A), HTSUSA, provides:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Heading 5806, HTSUSA, provides for "narrow woven fabrics." The meaning of "narrow woven fabrics" is found in note 5(a) to chapter 58, HTSUSA, which provides the following definition: "*[w]oven fabrics of a width not exceeding 30 cm*, whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges." (Emphasis added). ENs (A)(1) and (A)(2) for 5806, HTSUSA, state that the heading includes:

(1) Warp and weft fabrics in strips of a width not exceeding 30 cm, "*provided with selvages (flat or tubular) on both edges*". These articles are produced on special ribbon looms several ribbons often being produced simultaneously; in some cases the ribbons may be woven with wavy edges on one or both sides.

(2) Strips of a width not exceeding 30 cm, cut (or slit) from wider pieces of warp and weft fabric (whether cut (or slit) longitudinally or on the cross) and provided with *false selvages on both edges*, or a normal woven selvedge on one edge and a false selvedge on the other. False selvages are designed to prevent unravelling [sic] of a piece of cut (or slit) fabric and may, for example, consist of a row of gauze stitches woven into the wider fabric before cutting (or slitting), *of a simple hem*, or they may be produced by gumming the edges of strips, or by fusing the edges in the case of certain ribbons of man-made fibres. (Emphasis added).

The classification of ribbons with wires inserted in hemmed edges of narrow woven fabrics has been the subject of several prior Customs Rulings. For example, see HQ 960767, dated January 15, 1998; HQ 953062, dated March 8, 1993; and HQ 953833, dated February 6, 1993. In each ruling, the goods were classified under heading 5806.

Accordingly, the goods in question, which are under 30 cm in width and which are hemmed (false selvages), are properly classifiable under heading 5806 as narrow fabrics.

Holding:

The goods which are the subject of this ruling are classifiable under heading 5806, HTSUSA. Style 827TRB62TF, made of 75 percent polyester and 25 percent metallic fibers, is classifiable in subheading 5806.32.1090, HTSUSA, with duty at the rate of 7.8 percent ad valorem. The designated textile and apparel category for that subheading is 229.

Style 827TRB32TN, made of 55 percent metallic, 35 percent nylon, and 10 percent polyester fibers, and style 827TRB27TN made of 70 percent metallic and 30 percent nylon fibers is 5806.39.3020, HTSUSA, with duty at the rate of 1.8 percent ad valorem. The designated textile and apparel category for that subheading is 229.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF TALKING PICTURE FRAME

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain component merchandise which is comprised of a recording device/picture frame/battery powered clock. Comments are invited on the correctness of the proposed revocation.

DATE: Comments must be received on or before November 13, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of a combined picture frame/recording device with a battery powered clock, marketed as the "ReCORD'G Talking Picture Frame." Comments are invited on the correctness of the proposed revocation.

PD B86822, dated July 15, 1997, classified the "ReCORD'G Talking Picture Frame/Clock" in subheading 9103.10.20, HTSUS, as a clock with watch movements: electrically operated: with opto-electronic display only. This ruling was based on General Rule of Interpretation 3(c) to the HTSUS. PD B86822 is set forth as "Attachment A" to this document.

It is now Customs position that this merchandise is classifiable under subheading 8520.90.00.80, as a magnetic tape recorder and other sound recording apparatus, whether or not incorporating a sound reproducing device; other: other. Proposed HQ 960911 revoking PD B86822 is

set forth as "Attachment B" to this document. Before taking any action, consideration will be given to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 28, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 15, 1997.
CLA-2-91:SV:S:C:B16 B86822
Category: Classification
Tariff No. 9103.10.2030 and 9103.10.2040

MR. ALAN DRAKE
FRITZ COMPANIES, INC.
1721 West Elfindale, Suite 205
Springfield, MO 65807

Subject: Classification of "ReCORD'G" Talking Picture Frame/Clock

DEAR MR. DRAKE:

In your letter dated June 19, 1997, you requested a binding tariff classification ruling for the "ReCORD'G Talking Picture Frame/Clock" on behalf of your client, R. D. Manufacturing Corporation.

The "ReCORD'G" talking picture frame/clock is a 2.55" x 2.5" x 0.58" device which records a 10 second message and allows playback. The device also contains a picture frame and digital clock which displays time and date. Four AG13 batteries are required for operation. The country of origin is Switzerland.

The "ReCORD'G" talking picture frame/clock is a composite article which incorporates a recorder, clock and picture frame. In this case the essential character cannot be determined. Therefore, according to GRI-3(c), the classification occurring last in numerical order appears to be applicable.

The applicable classifications for the "ReCORD'G" talking picture frame/clock is 9103.10.20 of the Harmonized Tariff Schedule (HTS) of the United States, which provides for "Clocks with watch

Movements: Electrically operated: With opto-electronic display only. The statistical suffix for the movement and case is 30 and the statistical suffix for the battery is 40. The applicable rate of duty is 3.1% on the movement and case plus 4.3% on the battery.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed upon each importation of this merchandise. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEFFREY O. BALDWIN, SR.,
Area Port Director,
Savannah, GA.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2-RR:CR:GC:960911:AML
Category: Classification
Tariff No. 8520.90.00

MR. ALAN DRAKE
FRITZ COMPANIES, INC.
1721 West Elfindale, Suite 205
Springfield, MO 65807

Re: ReCORD'G Talking Picture Frame/Clock; Reconsideration of PD Ruling Letter B86822.

DEAR MR. DRAKE:

In PD B86822, dated July 15, 1997, issued to you on behalf of R. D. Manufacturing Corporation by the Customs Area Port Director, Savannah, Georgia, the ReCORD'G Talking Picture Frame/Clock was classified as a clock with watch movements: electrically operated: with opto-electronic display only, under subheading 9103.10.20 of the Harmonized Tariff Schedule of the United States (HTSUS). This ruling responds to your request for reconsideration of PD 86822 and to your request for a binding ruling on behalf of R. D. Manufacturing Corporation. For the reasons stated herein, PD B86822 is in error and is revoked.

Facts:

The product is a pocket sized, tape recorder/picture frame, which measures 2.55" x 2.5" x .58", with a battery powered clock. For purposes of this description, reference is made to the opened product, with the section on the left being the "cover" or "front" and the section on the right being the "back" or "main body." The product folds open, like a book, to reveal a 2" square picture frame on the thin cover, and a speaker, electronic recording device and an Liquid Crystal Display (LCD) clock housed in the thicker main body. The speaker for the playback function of the voice recorder occupies the upper left quadrant of the back portion. The LCD clock is situated in the upper right quadrant of the thin portion and displays time and date. Its functions are controlled by "MODE" and "SET" control buttons situated immediately below the time/date display. The clock has an independent power source; it requires a GB-A1(1.5V) battery. In the bottom right quadrant are situated the controls for the voice recorder function: a green, triangular "PLAY" button; a circular, red "RECORD" button with a function light to its immediate left, which is roughly the size of a pencil tip; and a microphone, designated "MIC," of similar size to the function light, which is located to the left of the display light and in the same quadrant. The recording function requires four AG-13 batteries for operation and is capable of recording and playing back up to a ten second message. The article is packaged in a cardboard box with the declarations "[ten] seconds recording time;" "[p]ocket size: 2.55" x 2.5" x .58"; "[s]olid state (tapeless) recording technology;" "[r]ecorded messages retained for 100 years without battery;" inscribed on the side panels of the package. Neither the device nor its package bear country of origin information, although the inquirer states that the product originates in Switzerland.

Issue:

Whether the article is classified as a voice recorder, a picture frame or an electronic clock?

Law and Analysis:

Classification of imported products for rate of duty and statistical purposes is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI's). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]" The headings under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics.
3924.90	Other.
3924.90.20	Picture frames.

8520	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device.
8520.33.00	Other, cassette type.
8520.90.00	Other.
9103	Clocks with watch movements, excluding clocks of heading 9104.
9103.10	Electrically operated.
9103.10.20	With opto-electronic display only.

While the article can be partly described by all of these headings, it cannot be classified according to GRI 1. Resort must then be made to the remaining GRI's.

GRI 2 (b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3."

GRI 3 provides, in pertinent part:

When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

When interpreting and implementing the HTSUS, the Explanatory Notes (EN's) of the Harmonized Commodity Description and Coding System may be utilized. The EN's, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The guidance of the EN's is necessary in the instant analysis.

EN Rule 3(a)(V), p. 4, states in pertinent part and relation to Rule 3(a) that "when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification shall be determined by Rule 3(b) or 3(c)." In this regard, EN Rule 3(b)(IX), p. 4, states in pertinent part that "composite goods made up of different components shall be taken to mean * * * those in which the components are attached to form a practically inseparable whole[.]"

EN Rule 3(b)(VII), p. 4, states, in reference to GRI 3(b), that in "all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

The term "essential character" is not defined within the HTSUS, GRI's or EN's. EN Rule 3(b)(VIII), p. 4, gives guidance, stating that "the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

The function which imparts the essential character of the product in question is that of the message recording device, with the picture frame and LCD clock being secondary and ancillary to the recording function. Consideration of the design features and the factors enumerated in EN Rule 3(b)(VIII) warrants this conclusion.

It is the portable and compact nature of the product which emphasizes the recording function of the product and de-emphasizes the frame and clock functions. The recording function is primary to the picture frame and the clock—it is the most sophisticated function of the component product and is the function emphasized on the package. It has an independent power source and purportedly is capable of storing a message for a considerable period of time (up to 100 years), even without power. The recorder occupies the bulk of the product, and is the most valuable function, financially from the manufacturer's perspective and in terms of marketability for the importer and utility for the consumer. Easily transportable within the pocket, the recorded message can be a practical reminder for busi-

ness or social appointments or the sentimental expression of a loved one. This analysis requires the determination that the essential character of this composite product is that of a tape recorder.

The product in the instant matter is classified under subheading 8520.90.00, HTSUS, which provides for magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device; other.

Holding:

The product in the instant matter shall be classified under subheading 8520.90.00, HTSUS, which provides for magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device; other. The column 1, general rate of duty is 0.8% *ad valorem*.

PD 86822 is revoked to reflect the determination made in this ruling.

JOHN DURANT,

Director,

Commercial Rulings Division.

MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PLASTIC WHEELS INCORPORATING ANTIFRICTION BEARINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling relating to the tariff classification of plastic wheels containing antifriction bearings. These are components of overhead conveyors used in poultry processing plants. Notice of the proposed revocation was published on August 19, 1998, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 14, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 19, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 33, proposing to modify NY 867993, dated November 6, 1991, which, in part, classified plastic wheels containing antifriction bearings, identified as parts AF8MDWH and D2081 HD, as other parts of elevators and conveyors, in subheading 8431.39.00, Harmonized Tariff Schedule of the United States (HTSUS). One comment

was received opposing the proposed modification. The commenter maintains that these articles are designed and utilized primarily as parts for conveyors, and are not sold on a general retail basis; that they are integral, essential parts of the conveyors with which they operate and the conveyors will not function without them; and, these articles are imported and sold for use as parts of overhead conveyors in poultry processing plants, rather than as ball or roller bearings.

Customs does not dispute the commenter's parts claim. However, goods that are parts of machines or apparatus of Chapters 84 and 85, HTSUS, are to be classified in accordance with Section XVI, Note 2, HTSUS. See *Nidec Corporation v. United States* 861 F. Supp. 136, *aff'd*, 68 F.3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b). As stated in draft ruling HQ 962086, published in the CUSTOMS BULLETIN on August 19, 1998, articles that function to position, hold and guide machine parts, as well as reduce friction during such movement, have been held to be ball or roller bearings of heading 8482. See *THK America, Inc. v. United States*, 17 CIT 1169 (1993). Parts AF8MDWH and D2081 HD are goods included in heading 8482.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY 867993 to reflect the proper classification of the articles designated parts AF8MDWH and D2081 HD in subheading 8482.10.50, HTSUS, a provision for other ball bearings. HQ 962086 modifying NY 867993 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: September 23, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Washington, DC, September 23, 1998.
CLA-2 RR:CR:GC 962086 JAS
Category: Classification
Tariff No. 8482.10.50

ROBERT S. SMITH, ESQ.
MCGUIRE, WOODS, BATTLE & BOOTHE
1627 Eye Street, N.W.
Washington, DC 20006

Re: NY 867993 Modified; plastic wheel, plastic and steel wheel incorporating steel anti-friction balls used in overhead conveyors; parts of conveyors, Heading 8431; articles that hold and guide machinery parts and reduce friction; other ball bearings, Heading 8482; *THK America, Inc. v. United States*, *Nidec Corporation v. United States*; Section XVI, Note 2, HTSUS.

DEAR MR. SMITH:

In NY 867993, which the Area Director of Customs, New York, issued to you on November 6, 1991, on behalf of **BNL Limited** and **IABC**, its wholly owned U.S. subsidiary, certain plastic wheels containing antifriction balls were held to be classifiable in subheading 8431.39.00, Harmonized Tariff Schedule of the United States (HTSUS), as other parts suitable for use solely or principally with conveyors of heading 8428. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 867993 was published on August 19, 1998, in the Customs Bulletin, Volume 32, Number 33. You submitted one comment opposing Customs proposed action.

Facts:

NY 867993 in part addressed the tariff status of part AF8MDWH and part D2081 HD, described as plastic components designed for overhead conveyors. These were designated as items 1 and 4 in NY 867993. The ruling also addressed parts AC8MDP58, a wheel/pulley, and D1029, a plastic yoke, designated as items 2 and 3. The classification of items 2 and 3 is not in issue here.

Part AF8MDWH was described as a circular plastic (acetal copolymer) wheel approximately 2 inches in diameter and containing polished steel antifriction balls. Submitted specifications list one of its physical characteristics as reduction of friction. Part D2081 HD was described as a plastic (acetal copolymer) wheel with a stainless steel inner race, antifriction balls, and a threaded shaft. Both wheels are designed to operate at a maximum 100 pound stress capability, and will be mounted into the plastic yoke, part D1029. Two of the plastic yokes are combined into a Y-shaped assembly to form a trolley mechanism designed to support loads while rolling along an I-beam which serves as the track of an overhead chain conveyor in poultry processing plants.

You supported the subheading 8431.39.00, HTSUS, classification on the basis that the articles were designed and manufactured for specific uses as parts of overhead conveyors, and that their physical features prevented their use in any other application.

The provisions under consideration are as follows:

8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
8431.39	Other:
8431.39.00 (now 80)	Other
	* * * * *
8482	Ball or roller bearings, and parts thereof:
8482.10.10	Ball bearings with integral shafts
8482.10.50	Other

Issue:

Whether parts AF8MDWH and D2081 HD are goods of heading 8482.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs at p. 1433 state that heading 8482 covers ball, roller, or needle roller type bearings that enable friction to be considerably reduced. They may be designed to give radial support or to resist thrust. Normally, bearings consist of two concentric rings or races enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

In articles of this type, the outer plastic portion of the wheel is significantly reinforced in thickness to provide weight-carrying capability and also permits the article to roll on the track of an overhead conveyor. On the underside of this plastic wheel, and integral to it, is a metal piece specially machined to create a smooth, precisioned raceway needed to reduce friction during movement. Known by various names, articles that function to position, hold and guide moving machine parts, as well as reduce friction during such movement, have been held to be ball or roller bearings of heading 8482. See *THK America, Inc. v. United States*, 17 CIT 1169 (1993), and lexicographic sources cited. Parts AF8MDWH and D2081 HD function in this manner.

Goods that are identifiable parts of machines or apparatus of Chapters 84 and 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. See *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd*, 68 F. 3d 133 (1995). Parts that are goods included in any heading of Chapter 84 or Chapter 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts are to be classified with the machine or machines with which they are solely or principally used. See Note 2(b). The parts claim under subheading 8431.39.00 (now 80), must fail because parts AF8MDWH and D2081 HD are goods included in heading 8482.

Holding:

Under the authority of GRI 1, the rail rollers are provided for in heading 8482. They are classifiable in subheading 8482.10.50, HTSUS. NY 867993, dated November 6, 1991, is modified accordingly.

In accordance with the 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)



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